

Council/Agency Meeting Held: _____	City Clerk's Signature
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date: July 5, 2005	Department ID Number: PL 05-20

## CITY OF HUNTINGTON BEACH

### REQUEST FOR CITY COUNCIL/REDEVELOPMENT AGENCY ACTION

**SUBMITTED TO:** HONORABLE MAYOR AND CITY COUNCIL  
MEMBERS/REDEVELOPMENT AGENCY MEMBERS

**SUBMITTED BY:** *Penelope Culbreth Graft*  
PENELOPE CULBRETH-GRAFT, City Administrator/Executive Director

**PREPARED BY:** HOWARD ZELEFSKY, Director of Planning *Howard Zelefsky*

**SUBJECT:** APPROVE AFFORDABLE HOUSING AGREEMENT (HARBINGER HOMES, INC.)

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

**Statement of Issue:** Transmitted for your consideration is a request by Harbinger Homes, Inc. to approve an affordable housing agreement for an eight unit attached townhome project located at the southwest corner of Delaware Street and Garfield Avenue. The agreement will restrict one townhome unit to moderate income households (up to 100% of Orange County Median) for a period of 60 years in accord with the affordable housing requirements for this project. Staff recommends that the City Council/Redevelopment Agency review and approve the affordable housing agreement.

**Funding Source:** Not applicable.

**Recommended Action:** City Council/Redevelopment Agency Action

Motion to:

"Approve the Declaration of Conditions, Covenants and Restrictions for Property (Resale Restrictions) By and Between the City of Huntington Beach City Council/Redevelopment Agency and Harbinger Homes, Inc., and authorize the Mayor/Agency Chair, Executive Director, and City Clerk to sign and execute (Attachment No. 1)."

**Alternative Action(s):**

The City Council/Redevelopment Agency may make the following alternative motion(s):  
"Continue the Declaration of Conditions, Covenants and Restrictions for Property By and Between the City of Huntington Beach and Harbinger Homes, Inc., and direct staff accordingly."

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# REQUEST FOR CITY COUNCIL/REDEVELOPMENT AGENCY ACTION

MEETING DATE: July 5, 2005

DEPARTMENT ID NUMBER: PL 05-20

## Analysis:

### A. PROJECT PROPOSAL:

Applicant: Harbinger Homes, Inc., 2728 17<sup>th</sup> Street, Huntington Beach, CA 92648

Location: 19028 Delaware Street (Southwest corner of Delaware Street and Garfield Avenue)

The affordable housing agreement will restrict one on-site, for sale, unit to moderate income households (100% of the Orange County Median) for a period of 60 years.

The Zoning Administrator approved the Harbinger Homes, Inc. project on June 2, 2004. The project consists of eight two-story, three bedroom condominium dwelling units with attached garages on a 0.61-acre site.

### B. ANALYSIS:

The proposed agreement is consistent with the citywide affordable housing ordinance. One of the eight units will be restricted for-sale to households earning less than 100% of the Orange County median. For a four-person household this is the equivalent of \$75,700 in annual gross income based on the 2005 Income Standard distributed by HUD. The maximum sales price will be based on this requirement.

The City Attorney's Office has prepared the standard affordable housing agreement (Attached). The applicant has signed the agreement, and staff recommends the City Council approve the request. The Redevelopment Agency is co-recommending this action because it will be incurring the future costs of monitoring the affordability agreement under the Agency's Administrative Fund. A project does not need to be located within a redevelopment project area for the Agency to monitor the agreement.

## Environmental Status:

The subject request is not subject to the California Environmental Quality Act pursuant to Section 15061 (b) (3).

## Attachment(s):

City Clerk's Page Number	No.	Description
3	1.	Covenants and Restrictions for Property Resale Restrictions-Affordable Housing Agreement

RCA Author: Medel/MBB

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# ATTACHMENT 1

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RECORDING REQUESTED BY )  
AND WHEN RECORDED MAIL TO: )  
 )  
City of Huntington Beach )  
2000 Main Street )  
Huntington Beach, CA 92648 )  
Attn: City Clerk )

(Space above for Recorder's use)  
This document is exempt from recording fees  
pursuant to Government Code Section 27383.

DECLARATION OF CONDITIONS, COVENANTS  
AND RESTRICTIONS FOR PROPERTY  
(RESALE RESTRICTIONS)

This Declaration Of Conditions, Covenants And Restrictions For Property (the "Declaration") is made as of January 11, 2005, by and between HARBINGER HOMES, INC. (the "Covenantor"), and THE CITY OF HUNTINGTON BEACH, a California municipal corporation (the "City") and the REDEVELOPMENT AGENCY OF THE CITY OF HUNTINGTON BEACH, a public body corporate and politic (the "Agency"). Collectively, the City and Agency will be referred to as the "Covenantee".

RECITALS

A. Covenantor will be owner of record of that certain real property located in the City of Huntington Beach, County of Orange, State of California legally described in the attached Exhibit "A".

B. On APRIL 4, 2005, the CITY COUNCIL (City Council ~~or City Engineer~~) approved ~~FINAL TRACT MAP~~ Final Tract Map ~~or Parcel Map~~ Number 16675. City imposed conditions of approval on the Project, requiring Covenantor to submit an Affordable Housing Agreement Plan (the "Declaration") for review and approval by the Planning Department. The City further required that the plan or declaration shall provide 10.0% of the total number of units or 1 number of units to be affordable housing for households earning less than 100% of the Orange County Median Income for a period of sixty years. The execution and recordation of this Declaration is intended to fully satisfy that condition.

NOW, THEREFORE, the parties hereto agree and covenant as follows:

1. **Affordability Covenants.** Covenantor agrees for itself and its successors and assigns, and every successor to Covenantor's interest in the affordable unit, or any part thereof, that the property located at 19028 Delaware Street, which consists of 1 units, shall be designated

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as affordable and shall be held subject to this Declaration for sixty years from the date of Notice of Completion of units built in Tract Number 16675 as follows:

(a) Each affordable unit shall only be owned and occupied by Covenantor or by "Moderate Income Households", which shall mean persons or families earning less than one hundred percent (100%) or less of the Orange County median income, adjusted for household size appropriate for the property as determined by the Agency based on statistics published by the United States Department of Housing & Urban Development or established by the State of California, pursuant to Health and Safety Code Section 50093, or a successor statute.

(b) The affordable unit shall only be sold at an "Affordable Housing Cost" to Moderate Income Households. Affordable Housing Cost shall mean the permitted gross sales price of the unit as set forth in the Affordable Housing Price/Income Guidelines or successor guidelines published, from time to time, by the City for such purpose.

(c) The term of this agreement shall commence on the date this document is recorded with the Orange County Recorder's Office and continue for sixty years ("Affordability Period"). The covenant contained in this Section 1 shall run with the affordable unit and shall automatically terminate and be of no further force or effect upon the expiration of the Affordability Period.

2. **Transfer of affordable unit.** No transfer of the affordable unit shall occur until the City determines (a) that the proposed purchaser intends to occupy the affordable unit as the proposed purchaser's principal residence, (b) that the proposed purchaser is a Moderate Income Household, and (c) that the proposed transfer occurs at an Affordable Housing Cost. In the event that Covenantor (including successors and assigns) desires to sell the affordable unit, Covenantor shall send written notice thereof to the City at the following address:

City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648  
Attention: Director of Economic Development

Within seven (7) days of receiving such notice, the City shall send Covenantor transfer application forms prepared by the City. Such forms shall contain a certification of the proposed purchaser's intent with respect to his/her/its residency of the affordable unit and his/her/its gross income, and an affidavit of the proposed purchaser disclosing and certifying the amount of the proposed purchase price. The City shall not be obligated to approve a transfer unless and until the proposed purchaser has submitted to the City such information and completed such forms. In the interest of expediting the close of escrow for such proposed transactions, the City shall reasonably approve or disapprove such submissions as soon as practicable after submission of such forms, and in no event later than fourteen (14) days after submission of a completed form. If the City fails to approve or disapprove a submission within such fourteen (14) day period, the City shall be deemed to have approved such transfer in accordance with the foregoing. Prior to conveyance of the affordable unit, each approved purchaser shall also submit to the City an executed disclosure statement which certifies that the

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purchaser is aware that the purchaser buying the affordable unit may only sell the unit at an Affordable Housing Cost to a Moderate Income Household, that the maximum permitted sales price may be less than fair market value and that the affordable unit must be owner-occupied at all times and cannot be rented or leased. Covenantor shall cooperate with the City in providing such forms to proposed purchasers and in assisting proposed purchasers to prepare such forms and to provide any required information to the City in connection with only the Covenantor's sale of the affordable unit, provided that the Covenantor shall not be obligated to incur any out-of-pocket costs in connection therewith, other than employee time dedicated to providing such assistance.

THE COVENANTOR AND EACH SUCCESSOR, HEIR, OR ASSIGN OF COVENANTOR UNDERSTAND THAT THE DETERMINATION OF THE AFFORDABLE HOUSING COST CAN BE MADE ONLY AT THE TIME OF THE PROPOSED TRANSFER, TAKING INTO CONSIDERATION INTEREST RATES, THE TERMS OF SALE OFFERED TO AND THE ECONOMIC CIRCUMSTANCES OF THE PROPOSED PURCHASER AND OTHER FACTORS THAT CANNOT BE ACCURATELY PREDICTED, AND THAT THE TRANSFER PRICE PERMITTED HEREUNDER MAY BE LESS THAN THE FAIR MARKET VALUE OF THE PROPERTY AND MAY NOT INCREASE OR DECREASE IN THE SAME MANNER AS OTHER SIMILAR REAL PROPERTY WHICH IS NOT ENCUMBERED BY THIS RESTRICTION. COVENANTOR AND EACH SUCCESSOR, HEIR, OR ASSIGN OF COVENANTOR FURTHER ACKNOWLEDGES THAT AT ALL TIMES IN SETTING THE TRANSFER PRICE, THE PRIMARY OBJECTIVE OF THE CITY AND THIS DECLARATION IS TO PROVIDE HOUSING TO MODERATE INCOME HOUSEHOLDS AT AN AFFORDABLE HOUSING COST.

(KS)

Covenantor's Initials

3. Covenantor shall include in the escrow instructions and Purchase and Sale Agreements with buyers a provision which requires each buyer to record a covenant which will run with the land and bind all successors-in-interest or assignees that will ensure that all subsequent buyers and occupants qualify as Moderate Income households. Said covenant shall remain in full force and effect for the Affordability Period as set forth in Section 1.

4. **Non-Discrimination Covenants.** Covenantor covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, sexual orientation, creed, ancestry, national or ethnic origin, age, family or marital status, handicap or disability, in the sale, transfer, use, occupancy, tenure, or enjoyment of the affordable unit, nor shall Covenantor itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the

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selection, location, number, use or occupancy of tenants, subtenants, or vendees in the affordable unit.

Covenantor and its successors and assigns shall refrain from restricting the sale of the affordable unit on the basis of race, color, religion, sex, sexual orientation, creed, ancestry, national or ethnic origin, age, family or marital status, handicap or disability, of any person. All such deeds or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clause:

(a) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, sex, sexual orientation, creed, ancestry, national or ethnic origin, age, family or marital status, handicap or disability, in the sale, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(b) In contracts: "There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, religion, sex, sexual orientation, creed, ancestry, national or ethnic origin, age, family or marital status, handicap or disability, in the sale, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferor himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, subtenants or vendee of the premises."

(c) In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assignees, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, religion, sex, sexual orientation, creed, ancestry, national or ethnic origin, age, family or marital status, handicap or disability in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

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5. **Covenants Do Not Impair Lien.** No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Declaration shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest.

6. **Covenants For Benefit of City.** All covenants without regard to technical classification or designation shall be binding for the benefit of the Covenantee and such covenants shall run in favor of Covenantee for the entire period during which time such covenants shall be in force and effect, without regard to whether the Covenantee is or remains an owner of any land or interest therein to which such covenants relate. The Covenantee, in the event of any breach of any such covenants, shall have the right to exercise all the rights and remedies and to maintain any such action at law or suits in equity or other proper legal proceedings to enforce and to cure such breach to which it or any other beneficiaries of these covenants may be entitled during the term specified for such covenants, except the covenants against discrimination which may be enforced at law or in equity at any time in perpetuity.

7. **Counterparts.** This Agreement may be executed in a number of counterparts, each of which shall be an original, but all of which shall constitute one and the same document.

8. **Applicable Law.**

(a) If any provision of this Agreement or portion thereof, or the application of any provision to any person or circumstances, shall to any extent be held invalid, inoperative, or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby and it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(b) This Agreement shall be construed in accordance with the laws of the State of California.

**[Signatures and Jurats to Follow]**

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IN WITNESS WHEREOF, the Covenantee and Covenantor have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized as of the date set forth above.

**COVENANTOR:**

HARBINGER HOMES, INC., a California corporation

By: K Smith  
Title: PRESIDENT

By: K Smith  
Title: SECRETARY

**COVENANTEE:**

CITY OF HUNTINGTON BEACH,  
a California municipal corporation

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

THE REDEVELOPMENT AGENCY OF THE  
CITY OF HUNTINGTON BEACH, a public  
body corporate and politic

By: \_\_\_\_\_  
Deputy Executive Director

APPROVED AS TO FORM:

P. Edgar 5/26/05  
City Attorney / Agency Counsel LHM 5/26/05

INITIATED AND APPROVED:

[Signature] FOR H2  
Planning Director

REVIEWED AND APPROVED:

[Signature]  
City Administrator

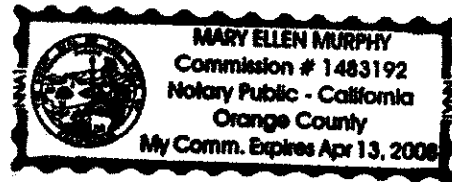
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STATE OF CALIFORNIA    )  
                                  )  
COUNTY OF ORANGE    )       SS.

On March 9, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Kerry Smith personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the persons or the entities upon behalf of which the person acted executed the instrument.

WITNESS my hand and official seal.

Mary Ellen Murphy  
Signature of Notary Public



(SEAL)

STATE OF CALIFORNIA    )  
                                  )  
COUNTY OF ORANGE    )       SS.

On March 9, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Kerry Smith personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the persons or the entities upon behalf of which the person acted executed the instrument.

WITNESS my hand and official seal.

Mary Ellen Murphy  
Signature of Notary Public



(SEAL)

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Exhibit "A"

**LEGAL DESCRIPTION OF THE AFFORDABLE UNIT**

Unit 1 of Tract Map no. 16675 as shown on a map recorded in Book 866, Pages 47 through 48, inclusive, miscellaneous maps, as instrument number 200500381278 in the office of the Orange County Recorder.

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# State of California

**Kevin Shelley**  
**Secretary of State**

## STATEMENT OF INFORMATION (Domestic Stock Corporation)

**FEES (Filing and Disclosure): \$25.00. If amendment, see instructions.**

**IMPORTANT — READ INSTRUCTIONS BEFORE COMPLETING THIS FORM**

1. **CORPORATE NAME** (Please do not alter if name is preprinted.)

C1664971  
HARBINGER HOMES, INC.  
2728 17TH STREET  
HUNTINGTON BEACH CA 92648

This Space For Filing Use Only

**DUE DATE: 05-31-05**

### CALIFORNIA CORPORATE DISCLOSURE ACT (Corporations Code section 1502.1)

A publicly traded corporation must file with the Secretary of State a Corporate Disclosure Statement (Form SI-PT) annually, within 150 days after the end of its fiscal year. Please see reverse for additional information regarding publicly traded corporations.

### NO CHANGE STATEMENT

2. ☐ If there has been no change in any of the information contained in the last Statement of Information filed with the Secretary of State, check the box and proceed to Item 15.

If there have been any changes to the information contained in the last Statement of Information filed with the Secretary of State, or no statement has been previously filed, this form must be completed in its entirety.

### COMPLETE ADDRESSES FOR THE FOLLOWING (Do not abbreviate the name of the city. Items 3 and 4 cannot be P.O. Boxes.)

3. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE	CITY AND STATE	ZIP CODE
120 Monte Vista Ave.	COSTA MESA CA	92627
4. STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA, IF ANY	CITY STATE	ZIP CODE
120 Monte Vista Ave.	COSTA MESA CA CA	92627

### NAMES AND COMPLETE ADDRESSES OF THE FOLLOWING OFFICERS (The corporation must have these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)

5. CHIEF EXECUTIVE OFFICER/	ADDRESS	CITY AND STATE	ZIP CODE
KERRY SMITH	120 Monte Vista Ave.	COSTA MESA CA	92627
6. SECRETARY/	ADDRESS	CITY AND STATE	ZIP CODE
KERRY SMITH	120 Monte Vista Ave.	COSTA MESA CA	92627
7. CHIEF FINANCIAL OFFICER/	ADDRESS	CITY AND STATE	ZIP CODE
KERRY SMITH	120 Monte Vista Ave.	COSTA MESA CA	92627

### NAMES AND COMPLETE ADDRESSES OF ALL DIRECTORS, INCLUDING DIRECTORS WHO ARE ALSO OFFICERS (The corporation must have at least one director. Attach additional pages, if necessary.)

8. NAME	ADDRESS	CITY AND STATE	ZIP CODE
KERRY SMITH	120 Monte Vista Ave.	COSTA MESA CA	92627
9. NAME	ADDRESS	CITY AND STATE	ZIP CODE
10. NAME	ADDRESS	CITY AND STATE	ZIP CODE

11. NUMBER OF VACANCIES ON THE BOARD OF DIRECTORS, IF ANY:

**AGENT FOR SERVICE OF PROCESS** (If the agent is an individual, the agent must reside in California and Item 13 must be completed with a California address. If the agent is another corporation, the agent must have on file with the California Secretary of State a certificate pursuant to Corporations Code section 1505 and Item 13 must be left blank.)

12. NAME OF AGENT FOR SERVICE OF PROCESS	ADDRESS	CITY AND STATE	ZIP CODE
KERRY SMITH	120 Monte Vista Ave.	COSTA MESA CA	92627
13. ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL	CITY	STATE	ZIP CODE
		CA	

### TYPE OF BUSINESS

14. DESCRIBE THE TYPE OF BUSINESS OF THE CORPORATION Real Estate Development

15. BY SUBMITTING THIS STATEMENT OF INFORMATION TO THE SECRETARY OF STATE, THE CORPORATION CERTIFIES THE INFORMATION CONTAINED HEREIN, INCLUDING ANY ATTACHMENTS, IS TRUE AND CORRECT.

TYPE OR PRINT NAME OF PERSON COMPLETING THE FORM	SIGNATURE	TITLE	DATE
KERRY SMITH	K Smith	President	3/1/05

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